

**IN THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION
AT NASHVILLE**

FREDRIKA JO IRVIN,)	Sumner County Circuit Court
)	No. 13371-C
Plaintiff/Appellee.)	C. A. No. 01A01-9510-CV-00477
)	
VS.)	Hon. Thomas Goodall, Judge
)	
TERRY LEE IRVIN,)	AFFIRMED AS MODIFIED
)	
Defendant/Appellant.)	
)	OPINION FILED:

Russell E. Freeman, HAYNES, WALKER AND FREEMAN, Goodlettsville, Tennessee
for Defendant/Appellant.

F. Dulin Kelly, KELLY & KELLY, Hendersonville, Tennessee
for Plaintiff/Appellee.

FILED
March 27, 1996
Cecil W. Crowson Appellate Court Clerk

MEMORANDUM OPINION¹

FARMER, J.

Following the entry of the divorce decree, Terry Lee Irvin (Husband) appeals from the trial court's award of permanent support to Fredrika Jo Irvin (Wife), contending that the court erred in awarding permanent support versus rehabilitative support. He further contends that the trial court erred in ordering him to pay Wife's attorney's fees.

With respect to the award of permanent support, T.C.A. § 36-5-101(d) expresses the general assembly's intent "that a spouse who is economically disadvantaged relative to the other spouse be rehabilitated whenever possible by the granting of an order for payment of rehabilitative, temporary support and maintenance." The statute further provides that,

Where there is such relative economic disadvantage and rehabilitation is not feasible in consideration of all relevant factors, . . . then the court may grant an order for payment of support and maintenance on

¹**Rule 10 (Court of Appeals). Memorandum Opinion.** -- (b) The Court, with concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be cited or relied on for any reason in a subsequent unrelated case.

a long-term basis or until the death or remarriage of the recipient except as otherwise provided

In considering whether payment for support and maintenance is proper, the court shall consider all relevant factors including those set forth in the above statute. At the time of this divorce, Wife was 36 years of age and Husband 41. They were married approximately 15 years and had two children ages 10 and 11 at trial. Both parties are high school graduates. Husband has worked throughout the marriage but the parties agreed Wife, who had worked as a secretary, would not work after the children were born. Wife was granted custody of the children and Husband granted visitation.

Our review of the record convinces us that Wife is economically disadvantaged. It was necessary for her to return to the work force when the parties separated. She obtained employment in a medical office where she nets \$246 per week. Husband earned approximately \$56,000 in 1992, \$64,000 in 1993 and \$74,000 in 1994. As of the date of trial in June 1995, he had earned approximately \$35,000 for that year. Wife testified that she had investigated an eight to twelve month course costing \$6,000 which would allow her to become a medical assistant. However, she also learned that this would not enhance her earning ability. Husband contends that Wife has developed skills through her volunteer work at school, church and community activities which should assist her in finding employment. Wife counters that she has developed no marketable skills.

Husband presented evidence that he will not be assured as much overtime in the future as in the past and the \$35,000 earned through the date of the trial contained overtime which he could not reasonably expect for the remainder of the year and beyond. As noted above, his income increased in each of the three years prior to the trial. Of course, the court is empowered to entertain an application of either party for an increase or decrease of spousal support and to grant relief upon a showing of a substantial and material change of circumstances. T.C.A. § 36-5-101(a)(1). Given the circumstances of this case, we do not find that the trial court erred in awarding permanent alimony as opposed to rehabilitative alimony.

Insofar as the amount of spousal support is concerned, the trial court found Wife's needs to be \$4,000 per month and we do not find the evidence to preponderate to the contrary. Rule 13(d) T.R.A.P. Husband was ordered to pay support in the amount of \$1,548 per month and child support of \$1,394 per month. These amounts, plus Wife's earnings, will allow her to meet her needs. Husband contends that a portion of these debts are short-term and her needs will be less when these debts are satisfied. In examining Wife's expenses, the largest single item is the mortgage on the home but the record does not reveal the term. She testified that the MasterCard debt of \$7,000 was being paid at \$155 per month, which would take approximately 3-1/2 years to satisfy. Two other indebtednesses in the amount of \$2,300 each were being satisfied at \$90 and \$80 monthly which would take some 2 to 2-1/2 years to satisfy. Therefore, we believe it would be equitable to modify the award of spousal support to the extent that it be reduced in the amount of \$300 per month beginning July 1, 1999, which is some four years following the entry of the divorce decree.

Husband does not question the amount of attorney fees awarded but whether the trial court erred in requiring him to pay. When a financially needy wife is awarded *alimony in solido* sufficient to cover her needs, there is no need for an award for fees; however, the court should award as an additional alimony an amount that will enable a wife to reasonably compensate her attorney. *Ligon v. Ligon*, 556 S.W.2d 763 (Tenn. App. 1977). Moreover, where the wife has a small income and receives a modest share of a marital estate, the court may make an award for the payment of her lawyer. *Luna v. Luna*, 718 S.W.2d 673 (Tenn. App. 1986). The Irvins' marital estate was minimal and Wife received virtually no cash. We find no merit in this issue and affirm the judgment of the trial court as modified. Costs of this appeal are taxed to the appellant, for which execution may issue if necessary.

FARMER, J.

CRAWFORD, P.J., W.S. (Concurs)

LILLARD, J. (Concurs)